

ARGUMENT AGAINST PROPOSITION 48

In this measure, the State Legislature is proposing that we permanently delete from the California Constitution any provision for “municipal courts.”

The main drawback to the proposal is that it would preclude the re-establishment of municipal courts in any of California’s 58 counties.

Why might a county want to re-establish a “municipal court” below its “superior court”? One reason might be to save money. Superior Court Judges are paid more.

An even more important reason, though, is that some counties (or even the State Legislature sometime in the future) may realize that having all of the trial court judges in a county part of the same “superior court” creates at least the appearance of unfairness. Allow us to explain.

Trial courts handle two kinds of cases that have been particularly affected by the “consolidation” of the municipal and superior courts in the 58 counties.

The first kind of case involves a criminal charge lodged by a local or state prosecutor. A criminal charge may be a “felony” or a less-serious “misdemeanor.” Both kinds of criminal charges potentially call for examination of the case by two or more judges.

A felony case is initiated by the filing of a charge which is presented either to a local criminal grand jury or, in over 95% of the cases, to a local judge sitting as a “magistrate.” If the grand jury or magistrate decides that the prosecutor has presented enough evidence of guilt (i.e., probable cause) to justify a trial, the prosecutor is authorized to proceed to trial.

At that point, the decision to allow the prosecutor to proceed may be challenged by the accused. Here we encounter a problem created by court consolidation. The judge who will hear the challenge will almost always be a

judge in the very same court as the judge whose decision is being challenged!

A misdemeanor case is ordinarily set for trial without any hearing to determine whether a trial appears justified. If you are convicted in a misdemeanor trial, you may appeal; however, the appeal is decided by a panel of 3 judges from the very same “superior court” in which you would have already been convicted!

Finally, a civil case which seeks \$25,000 or less is called a “limited jurisdiction case.” An appeal from a judgment in such a case, once again, is decided by a panel of 3 judges from the very same “superior court” in which you would have lost the case!

The basis for seeking review of what a judge has done in a case is that the judge ruled or acted wrongly. A one-court system which asks judges of the very same court to correct or rebuke their colleagues creates at least the appearance of unfairness.

Separate municipal and superior courts in the counties offered more “checks and balances” than the consolidated superior courts which have now been established. Some counties (or the State Legislature) may wish, in the future, to return to the former system.

For these reasons, we recommend that voters *not* permanently delete “municipal courts” from the California Constitution.

GARY B. WESLEY, *Co-Chair*
Voter Information Alliance (VIA)
MELVIN L. EMERICH, *Co-Chair*
Voter Information Alliance (VIA)

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 48

In 1998 the voters of California overwhelmingly approved Proposition 220 to authorize the elimination of the municipal courts. Municipal courts have been eliminated in every county, for estimated savings of \$23,000,000 a year for the taxpayers.

What remains to be done is the removal of obsolete language in the state constitution that references the no longer existing municipal courts. Proposition 48 accomplishes that goal.

The argument against Proposition 48 ignores what is before the voters. Instead, it argues for the advantages of having municipal courts. The voters already decided that issue four years ago by passing Proposition 220. It was approved because eliminating municipal courts allows more efficient use of judicial resources and eliminates administrative costs necessary to maintain two separate trial court systems.

The ONLY issue before us is, should obsolete provisions of the Constitution be eliminated? The

answer is clearly YES. Leaving obsolete references to municipal courts on the books would only clutter the law, while serving no useful purpose.

Any necessary improvements to the law regarding review of magistrate decisions that there is sufficient evidence to try a defendant for a crime, or for appeals in misdemeanor and smaller civil cases can be made to the existing appeals court system. It should not be accomplished by re-creating another level of courts that the public has already voted to eliminate.

Proposition 48 would prune deadwood from the California Constitution. Obsolete language unnecessarily complicates the law.

Vote YES on Proposition 48.

HOWARD WAYNE, *Assembly Member*
78th District
DAVID HUEBNER, *Chair*
California Law Revision Commission